

**FEDERAL ELECTION COMMISSION**  
**FIRST GENERAL COUNSEL'S REPORT**

**MUR: 7073**  
DATE COMPLAINT FILED: May 23, 2016  
DATE OF NOTIFICATIONS: May 26, 2016 and  
November 1, 2016  
LAST RESPONSE RECEIVED: December 28, 2016  
DATE ACTIVATED: January 11, 2017

EARLIEST SOL: February 14, 2020  
LATEST SOL: January 18, 2022  
ELECTION CYCLE: 2016

**COMPLAINANT:**

Karen Schutte

**RESPONDENTS:**

Alexander Meluskey  
Meluskey for U.S. Senate, Inc. and Julianne Ryan in  
her official capacity as treasurer  
Salem Media Group, Inc.  
Prescott Valley Broadcasting Co., Inc.  
Premier Radio Stations, LLC

**RELEVANT STATUTES  
AND REGULATIONS:**

52 U.S.C. § 30101(2), (8), (9), (18), (22), (26)  
52 U.S.C. § 30102(e)  
52 U.S.C. § 30103(a)  
52 U.S.C. § 30104(a)-(b)  
52 U.S.C. § 30118(a)  
52 U.S.C. § 30120(a)  
11 C.F.R. § 100.22(a)-(b)  
11 C.F.R. § 100.33(a)-(c)  
11 C.F.R. § 100.52(d)  
11 C.F.R. § 100.73  
11 C.F.R. § 100.110(e)  
11 C.F.R. § 100.111(e)  
11 C.F.R. § 100.132  
11 C.F.R. § 101.1(a)  
11 C.F.R. § 102.1(a)  
11 C.F.R. § 102.12(a)  
11 C.F.R. § 104.3(a)-(b)  
11 C.F.R. § 104.5(a)  
11 C.F.R. § 110.1(g)  
11 C.F.R. § 110.10  
11 C.F.R. § 110.11(a)-(c)  
11 C.F.R. § 300.2(m)

**INTERNAL REPORTS CHECKED:**

Disclosure Reports

**FEDERAL AGENCIES CHECKED:**

United States Senate Select Committee on Ethics

10001-1442001

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1 **I. INTRODUCTION**

2 The Complaint in this matter alleges that 2016 Arizona Senate candidate Alexander  
3 Meluskey and his principal campaign committee, Meluskey for U.S. Senate, Inc. and Julianne  
4 Ryan in her official capacity as treasurer (the "Committee"), violated the Federal Election  
5 Campaign Act of 1971, as amended (the "Act"), by failing to disclose disbursements for printing  
6 expenses and failing to disclose the source of loans Meluskey made to his campaign.<sup>1</sup> The  
7 Complaint also alleges that Meluskey used his weekly talk radio show to engage in campaign  
8 activity and, therefore, whoever funded the radio show made contributions to the Committee,  
9 which the Committee failed to disclose.

10 As an initial matter, we recommend that the Commission find reason to believe that  
11 Meluskey failed to file a timely Statement of Candidacy, in violation of 52 U.S.C. § 30102(e)(1).  
12 We recommend, however, that the Commission find no reason to believe that the Committee  
13 failed to disclose its printing expenses, in violation of 52 U.S.C. § 30104(b). We then  
14 recommend that the Commission find reason to believe that the Committee failed to disclose the  
15 source of Meluskey's loans, in violation of 52 U.S.C. § 30104(b). We also recommend that the  
16 Commission find that the Committee accepted and failed to disclose prohibited in-kind  
17 contributions in connection with Meluskey's talk radio show and failed to include disclaimers in  
18 the radio broadcasts, in violation of 52 U.S.C. §§ 30104(b), 30118(a), and 30120(a). Finally,  
19 pending our proposed investigation, we recommend that the Commission take no action at this

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<sup>1</sup> In addition to the allegations implicating possible violations of the Act, the Complaint also alleges that Meluskey publicly misrepresented that he is the Arizona State Director of the organization FAIRTax. Compl. at 1 (May 23, 2016). The Complaint claims both that the organization is fictitious and that Meluskey does not hold a position with it. *See id.* Meluskey has rebutted these allegations with a sworn declaration, in which he provided a working link to FAIRTax's website and swore that he was the Arizona State Director. Alexander Meluskey Decl. ¶ 14 (Aug. 26, 2016).

1 time against Salem Media Group, Inc., Prescott Valley Broadcasting Co., Inc., and Premier  
2 Radio Stations, LLC, the entities that broadcast Meluskey's radio show.

3 **II. FACTUAL AND LEGAL ANALYSIS**

4 Alexander Meluskey was a candidate for Senate in the 2016 Arizona Republican Primary  
5 Election.<sup>2</sup> Both before and during his candidacy, Meluskey owned a printing business, Optimum  
6 Graphics USA, LLC ("Optimum Graphics"), hosted a weekly talk radio show, "The Alex  
7 Meluskey Show," which aired on three Arizona radio stations, and was the state director of  
8 FAIRtax, a 501(c)(4) organization dedicated to reforming the Tax Code.<sup>3</sup> Meluskey filed a  
9 Statement of Candidacy on May 27, 2015,<sup>4</sup> and suspended his campaign on July 31, 2016, about  
10 a month prior to the August 30, 2016 Republican Primary.<sup>5</sup>

11 **A. There is Reason to Believe that Meluskey Failed to Timely File his Statement**  
12 **of Candidacy**

13  
14 An individual becomes a candidate under the Act when the individual seeks nomination  
15 for, or election to, federal office and: (a) such individual receives contributions or makes  
16 expenditures in excess of \$5,000, or (b) such individual gives his or her consent to another  
17 person to receive contributions or make expenditures on behalf of such individual, and if such  
18 person has received contributions or has made expenditures in excess of \$5,000.<sup>6</sup> Once the  
19 \$5,000 threshold has been met, the candidate has fifteen days to designate a principal campaign

<sup>2</sup> Alexander Meluskey, Statement of Candidacy (May 27, 2015) ("Statement of Candidacy").

<sup>3</sup> Compl. at 1; Meluskey Decl. ¶¶ 1-2, 7, 14, 16-18; *About Americans for Fair Taxation*, FAIRTAX, <https://fairtax.org/about> (last visited Apr. 11, 2017).

<sup>4</sup> Statement of Candidacy, *supra* note 2.

<sup>5</sup> Meluskey Decl. ¶ 4; *2016 Primary Election ~ August 30, 2016*, ARIZ. SEC'Y OF STATE, <http://apps.azsos.gov/election/2016/Primary/ElectionInformation.htm> (last visited Apr. 11, 2017).

<sup>6</sup> 52 U.S.C. § 30101(2); 11 C.F.R. § 100.3(a)(1)-(2).

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1 committee by filing a Statement of Candidacy with the Commission.<sup>7</sup> The principal campaign  
2 committee must file a Statement of Organization within ten days of its designation,<sup>8</sup> and must  
3 file disclosure reports with the Commission in accordance with 52 U.S.C. § 30104(a) and (b).<sup>9</sup>

4 Meluskey became a candidate on February 10, 2015, when his Committee disbursed over  
5 \$5,000 in connection with the primary election.<sup>10</sup> His Statement of Candidacy was due on or  
6 before February 25, 2015.<sup>11</sup> However, he waited until May 27, 2015, after the Commission  
7 provided him with a disavowal notice, to file his Statement of Candidacy.<sup>12</sup> Accordingly,  
8 Meluskey filed his Statement of Candidacy approximately three months late, and we recommend  
9 that the Commission find reason to believe that he violated 52 U.S.C. § 30102(e)(1).<sup>13</sup>

<sup>7</sup> 52 U.S.C. § 30102(e)(1); 11 C.F.R. § 101.1(a).

<sup>8</sup> 52 U.S.C. § 30103(a); 11 C.F.R. § 102.1(a).

<sup>9</sup> *See, e.g.*, Factual & Legal Analysis at 6, MUR 6735 (Friends of Joe Sestak); Factual & Legal Analysis at 5, MUR 6449 (Bruning for Senate 2012 Exploratory Committee); Factual & Legal Analysis at 2, MUR 5363 (Rev. Al Sharpton Presidential Exploratory Committee).

<sup>10</sup> Meluskey for U.S. Senate, Inc., Schedule B, 2015 April Quarterly Report (Apr. 20, 2015) (“2015 April Quarterly Report”).

<sup>11</sup> Meluskey’s Senate financial disclosure reports even state that Meluskey’s candidacy began in February 2015. *See, e.g.*, Alexander Meluskey, United States Senate Financial Disclosures, Candidate Report (Amendment 1) (Oct. 7, 2015) (“2015 Amended Financial Disclosure Report”). This is further evidence of the belated nature of his Statement of Candidacy.

<sup>12</sup> Alexander Meluskey, Disavowal Notice (May 26, 2015). The Commission sends a disavowal notice when it appears that a person has become a candidate but has not yet filed a Statement of Candidacy. *See id.* The notice instructs the person to either disavow the financial activities that appear to have triggered his candidate status or file a Statement of Candidacy. *See id.*

<sup>13</sup> Because the Committee registered with the Commission on March 10, 2015—prior to Meluskey filing his Statement of Candidacy—and filed a 2015 April Quarterly Report, Meluskey’s late filing did not cause the Committee to miss any reports or the deadline for organizing as a committee. *See* 52 U.S.C. § 30103(a); 11 C.F.R. § 102.1(a); Meluskey for U.S. Senate, Inc., Statement of Organization (Mar. 10, 2015); 2015 April Quarterly Report, *supra* note 10.

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1           **B.       There is No Reason to Believe that the Committee Failed to Disclose its**  
2                   **Printing Expenses**

3  
4           A candidate's principal campaign committee must disclose its disbursements in periodic  
5 reports to the Commission.<sup>14</sup> Specifically, the committee must disclose the name and address of  
6 any person to whom it disburses, in aggregate, more than \$200, together with the date, amount,  
7 and purpose of the expenditure.<sup>15</sup>

8           The Complaint alleges that, despite the Committee distributing items like posters and  
9 fliers, "there have never been any disclosures for printing done by Optimum Graphics or for that  
10 matter any other 'printing.'"<sup>16</sup> However, contrary to the allegation, the Committee's reports  
11 disclose numerous disbursements for printing. As the Committee stated in its Response, it  
12 reported seven printing disbursements to Optimum Graphics between May 2015 and April 2016,  
13 totaling \$49,893.<sup>17</sup> The Committee also reported tens of thousands of dollars of disbursements  
14 to other companies for "printing," "copying," and the production of printed materials, such as  
15 mailers, yard signs, newspaper inserts, and banners.<sup>18</sup> As there is no information suggesting that  
16 the Committee's disclosure was incomplete, we recommend that the Commission find no reason  
17 to believe that the Committee violated 52 U.S.C. § 30104(b)(5)(A) or (6)(A) by failing to  
18 disclose expenses for printing.

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<sup>14</sup> 52 U.S.C. § 30104(a)(2), (b)(4)-(5); 11 C.F.R. §§ 104.3(b)(2), (4), 104.5(a).

<sup>15</sup> 52 U.S.C. § 30104(b)(5)(A), (6)(A); 11 C.F.R. § 104.3(b)(4).

<sup>16</sup> Compl. at 1 & Attach. C.

<sup>17</sup> Committee Resp. at 4 (Aug. 29, 2016); *see also* Meluskey Decl. ¶ 11. Meluskey also swore that the Committee paid Optimum Graphics the full market value of the printing, and we have no information contradicting his declaration. *See* Meluskey Decl. ¶ 12. Therefore, to any extent the Complaint asserts that the Committee failed to disclose contributions from Optimum Graphics, the Response rebuts that allegation. *See* 11 C.F.R. § 100.52(d)(1) (stating that a discount on goods and services constitutes a contribution).

<sup>18</sup> *See* Schedule B of the Committee's 2015 April Quarterly, October Quarterly, and Year-End Reports and 2016 April Quarterly, July Quarterly, Pre-Primary, and October Quarterly Reports.

1           **C.     There is Reason to Believe that the Committee did not Properly Disclose the**  
2           **Source of Meluskey's Loans**

3  
4           Federal candidates may make unlimited contributions from their own "personal funds" to  
5 their authorized campaign committees.<sup>19</sup> The Act and Commission regulations provide that  
6 "personal funds" are (a) amounts derived from assets that, under applicable State law, the  
7 individual had legal right of access to, or control over, and to which the individual had legal and  
8 rightful title or an equitable interest at the time the individual became a candidate; and  
9 (b) income received during the current election cycle, which includes salary from employment,  
10 income from investments, and "gifts of a personal nature that had been customarily received by  
11 the candidate prior to the beginning of the election cycle."<sup>20</sup> If a candidate jointly owns an asset  
12 with his spouse, and there is no indication of the allocation of their ownership interests, the  
13 candidate's "personal funds" would include half of the value of the property.<sup>21</sup>

14           Authorized committees must disclose to the Commission all "[l]oans made, guaranteed,  
15 or endorsed by a candidate . . . including loans derived from a bank loan to the candidate or from  
16 an advance on a candidate's brokerage account, credit card, home equity line of credit, or other  
17 lines of credit . . ."<sup>22</sup> In all instances, the committee must indicate the source, value, date, and  
18 interest rate of the loan, and whether the loan is secured.<sup>23</sup> If the candidate guarantees or  
19 endorses the loan, rather than making the loan directly from his "personal funds," the committee

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<sup>19</sup> 11 C.F.R. § 110.10.

<sup>20</sup> 52 U.S.C. § 30101(26)(A)-(B); 11 C.F.R. § 100.33(a)-(b).

<sup>21</sup> 52 U.S.C. § 30101(26)(C); 11 C.F.R. § 100.33(c).

<sup>22</sup> 11 C.F.R. § 104.3(a)(3)(vii)(B); *see* 52 U.S.C. § 30104(b)(2)(G).

<sup>23</sup> *See* Schedule C, FEC Form 3, Report of Receipts and Disbursements for an Authorized Committee (revised May 2016) ("FEC Form 3").

1 must also include information about the lending institution and the types and value of collateral  
2 used to secure the loan.<sup>24</sup>

3 From March 10, 2015, to December 29, 2016, Meluskey made 36 loans to the  
4 Committee, totaling \$788,773.<sup>25</sup> The Committee reported that each loan was unsecured and  
5 came from Meluskey's "personal funds."<sup>26</sup> The Committee has not made any payments on the  
6 loans to date.<sup>27</sup>

7 The Complaint alleges that the Committee has not properly disclosed the source of  
8 Meluskey's loans. The Complaint argues that the loans could not have come from Meluskey's  
9 personal funds because, based on Meluskey's Financial Disclosure Reports ("FD Reports") to  
10 the Senate, he did not have enough assets to loan \$788,773 to the Committee. The Complaint  
11 suggests that Meluskey used an advance from a second line of credit on his home, which he  
12 obtained in October 2015, to secure the loans.<sup>28</sup>

13 In Response, the Committee asserts that Meluskey "properly disclosed all assets" on his  
14 Senate FD Reports, and that the reports showed that he had "significant assets and the ability to  
15 loan his campaign" the amounts disclosed by the Committee.<sup>29</sup> Meluskey also stated in his  
16 declaration that all the loans he made to the Committee came from the personal assets listed in  
17 his financial disclosure statements.<sup>30</sup> He stated that he refinanced his home as a "business

<sup>24</sup> See Schedule C-1, FEC Form 3, *supra* note 23.

<sup>25</sup> Meluskey for U.S. Senate, Inc., Schedule C, 2016 Year-End Report (Jan. 18, 2017) (listing all of Meluskey's loans).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Compl. at 1.

<sup>29</sup> Committee Resp. at 2-3.

<sup>30</sup> Meluskey Decl. ¶ 6.

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1 decision” and any funds derived from the new line of credit were for “personal use, not to  
2 finance [the] campaign.”<sup>31</sup>

3 Based on a review of Meluskey’s FD Reports filed in 2015 and 2016, it is not clear that  
4 Meluskey had sufficient “personal funds” to make \$778,733 worth of loans to the Committee.  
5 On Meluskey’s 2015 FD Report, initially filed on July 28, 2015, and amended October 27, 2015,  
6 Meluskey reported receiving earned income from Optimum Graphics in the amount of \$219,556  
7 for calendar year 2014 through approximately May 15, 2015.<sup>32</sup> Meluskey also reported only one  
8 asset that he jointly owned with his spouse, Optimum Graphics, which was worth between \$1-\$5  
9 million and produced \$100,001-\$1 million in income, of which \$225,749 appears to be wages he  
10 paid to himself.<sup>33</sup> The 2015 FD Report did not include any other assets but did include two  
11 jointly-held liabilities, a \$250,001-\$500,000 mortgage and a \$50,001-\$100,000 home equity line  
12 of credit.<sup>34</sup>

13 On his 2016 FD Report, initially filed on May 22, 2016, and amended November 19,  
14 2016, Meluskey’s primary asset was Optimum Graphics, which was still worth \$1-\$5 million  
15 and generated \$100,001-\$1 million in income, with \$312,408 of that sum used for Meluskey’s  
16 wages.<sup>35</sup> Meluskey separately reported that he received \$212,408 of earned income from

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<sup>31</sup> *Id.* ¶¶ 9-10.

<sup>32</sup> Alexander Meluskey, United States Senate Financial Disclosures, Candidate Report (July 28, 2015) (“2015 Original Financial Disclosure Report”); 2015 Amended Financial Disclosure Report, *supra* note 11; *see* U.S. SENATE SELECT COMM. ON ETHICS, PUBLIC FINANCIAL DISCLOSURE REPORT FOR THE UNITED STATES SENATE EFD INSTRUCTIONS 3, 5 (stating that the reporting period for candidates’ income is “the preceding calendar year and the current calendar year up to the date of filing the report,” and stating that the filing deadline is May 15).

<sup>33</sup> *See* 2015 Amended Financial Disclosure Report, *supra* note 11.

<sup>34</sup> *Id.*

<sup>35</sup> Alexander Meluskey, United States Senate Financial Disclosures, Candidate Report (May 22, 2016); Alexander Meluskey, United States Senate Financial Disclosures, Candidate Report (Amendment 1) (Nov. 19, 2016) (“2016 Amended Financial Disclosure Report”).

1 Optimum Graphics and reported \$100,000 in earned and non-investment income "From  
2 Savings."<sup>36</sup> In addition, he disclosed having two new Individual Retirement Accounts ("IRAs")  
3 valued between \$164,009 and \$510,000 and between \$18,004 and \$95,000.<sup>37</sup> In the liabilities  
4 section of the report, the value of the joint mortgage remained the same at \$250,001-\$500,000,  
5 while the value of the home equity line of credit increased to \$100,001-\$250,000.<sup>38</sup>

6 Based on these reports, it is unclear how Meluskey could have loaned his campaign  
7 \$788,773 of "personal funds." Meluskey did not disclose owning a checking or savings account  
8 despite the reference to "Savings" in the income section of his 2016 FD Report, and he stated in  
9 his declaration that he did not use the home equity line of credit to make the loans to the  
10 Committee.<sup>39</sup> This leaves his business, his mortgage, and the IRAs as the potential sources of  
11 the loans. However, those assets combined are not sufficient to account for \$788,773 in  
12 "personal funds."

13 First, it appears that the IRAs do not qualify as "personal funds." Meluskey did not  
14 disclose owning the IRAs on his 2015 FD Report, which suggests that he did not acquire them  
15 until after he filed that report in October 2015.<sup>40</sup> Because "personal funds" include only those  
16 assets the candidate had access to or control over at the time he became a candidate, and it

<sup>36</sup> 2016 Amended Financial Disclosure Report, *supra* note 35.

<sup>37</sup> *Id.* Meluskey's FD Reports do not provide any transactional information bearing on how and when he obtained the IRAs.

<sup>38</sup> *Id.*

<sup>39</sup> Meluskey Decl. ¶¶ 6, 9-10.

<sup>40</sup> See 2015 Amended Financial Disclosure Report, *supra* note 11; Factual & Legal Analysis at 7 ("F&LA"), MUR 6440 (Friends of Frank Guinta) ("In addition, while Guinta amended his 2010 EIGA Statement, he has never amended the earlier 2009 EIGA Statement to reflect that the funds at issue were among his personal assets in 2008. This omission suggests that Guinta . . . may have acquired that title or interest as late as 2010, when he was already a candidate. If this is the case, the funds Guinta loaned and contributed to his campaign would not constitute 'personal funds' . . .").

1 appears that Meluskey did not have the IRAs when he became a candidate in February 2015, the  
2 IRAs were not "personal funds."<sup>41</sup>

3           Second, it does not appear that Optimum Graphics was the source of the funds.  
4 Meluskey still owned the business at the time of his 2016 FD Report, so he did not sell his stake  
5 of the business to finance the loans.<sup>42</sup> Despite the \$100,001-\$1 million range for Optimum  
6 Graphics' annual income, Meluskey reported receiving only \$219,556 (2014/15) and \$212,408  
7 (2016) in earned income from Optimum Graphics and reported that Optimum Graphics  
8 generated between \$225,759 (2014/15) and \$312,408 (2016) in wages, and he did not report  
9 dividends or any other income from Optimum Graphics.<sup>43</sup> Because Meluskey's FD Reports are  
10 not clear, it is not certain whether Optimum Graphics generated any income outside of the  
11 reported wages, most of which appears to have been paid to Meluskey as earned income.<sup>44</sup>  
12 Given the fact that Meluskey was only a part owner of the company, and given the lack of  
13 information about the actual income generated by the company, it is not clear that his share of  
14 the annual income could have covered the full amount of the loans, or even a significant portion  
15 of the \$788,773.<sup>45</sup>

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<sup>41</sup> 11 C.F.R. § 100.33(a); *see* F&LA at 7, MUR 6440.

<sup>42</sup> *See* 2016 Amended Financial Disclosure Report, *supra* note 35.

<sup>43</sup> 2015 Original Financial Disclosure Report, *supra* note 32; 2016 Amended Financial Disclosure Report, *supra* note 35. It is not clear why Meluskey reported different numbers for earned income from Optimum Graphics and income that he labeled as "wage" income when disclosing Optimum Graphics as an asset on his FD Reports.

<sup>44</sup> *See* 2015 Original Financial Disclosure Report, *supra* note 32; 2016 Amended Financial Disclosure Report, *supra* note 35.

<sup>45</sup> *See* 2015 Original Financial Disclosure Report, *supra* note 32; 2016 Amended Financial Disclosure Report, *supra* note 35.

1           Lastly, since Meluskey's jointly-held mortgage was worth only \$500,000 at the most,  
2 Meluskey's half of the mortgage could not have covered the loans.<sup>46</sup> Even if Meluskey used the  
3 mortgage to make a portion of the loans, the Committee would have to disclose information  
4 about the financial institution that held the mortgage, rather than attributing the loan to  
5 Meluskey's "personal funds."<sup>47</sup>

6           Accordingly, based on the FD Reports and the assurances in Meluskey's declaration that  
7 he did not use the proceeds from his home refinancing for his campaign,<sup>48</sup> it is not clear that  
8 Meluskey had sufficient "personal funds" to loan the Committee \$788,773. We therefore  
9 recommend that the Commission find reason to believe that the Committee violated 52 U.S.C.  
10 § 30104(b)(2)(G).

11           **D.     There is Reason to Believe that the Committee Accepted and Failed to**  
12           **Report Prohibited Contributions and Failed to Include the Appropriate**  
13           **Disclaimers in Connection with Meluskey's Radio Show**

14           The Act and Commission regulations define "contribution" and "expenditure" to include  
15 the gift of "anything of value" for the purpose of influencing a federal election.<sup>49</sup> "Anything of  
16 value" in both contexts includes all in-kind contributions.<sup>50</sup> "Anything of value," however, does  
17 not include the provision of goods and services at the usual and normal charge.<sup>51</sup>

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<sup>46</sup>     2015 Original Financial Disclosure Report, *supra* note 32; 2016 Amended Financial Disclosure Report, *supra* note 35.

<sup>47</sup>     See 11 C.F.R. § 100.33(c); Schedule C-1, FEC Form 3, *supra* note 23.

<sup>48</sup>     Meluskey Decl. ¶¶ 9-10.

<sup>49</sup>     52 U.S.C. § 30101(8)(A)(i), (9)(A)(i).

<sup>50</sup>     11 C.F.R. §§ 100.52(d)(1), 100.111(e)(1).

<sup>51</sup>     *Id.* §§ 100.52(d), 100.110(e).

1 Candidate committees must disclose the identity of any person who makes contributions  
2 aggregating in excess of \$200 within an election cycle.<sup>52</sup> Committees are prohibited from  
3 knowingly accepting contributions from corporations, including limited liability companies that  
4 elect to be treated as corporations by the Internal Revenue Service.<sup>53</sup>

5 Whenever a person airs a public communication that solicits contributions or expressly  
6 advocates the election or defeat of a clearly identified candidate, that person must include a  
7 disclaimer in the communication, with specific language set out in the regulations.<sup>54</sup>  
8 Commission regulations define "solicit" as "to ask, request, or recommend, explicitly or  
9 implicitly, that another person make a contribution . . . ."<sup>55</sup> The regulations also provide that a  
10 "solicitation" is a "communication that, construed as reasonably understood in the context in  
11 which it is made, contains a clear message asking, requesting, or recommending that another  
12 person make a contribution . . . ."<sup>56</sup>

13 A communication "expressly advocates" the election or defeat of a clearly identified  
14 candidate when, among other things, it contains words that "in context can have no other  
15 reasonable meaning than to urge the election or defeat of one or more clearly identified

<sup>52</sup> 52 U.S.C. § 30104(b)(3)(A).

<sup>53</sup> *Id.* § 30118(a); 11 C.F.R. § 110.1(g).

<sup>54</sup> 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a)(2)-(3), (b), (c). The term "public communication" includes communications "by means of any broadcast." 52 U.S.C. § 30101(22). A candidate is "clearly identified" when the communication includes the name of the candidate or "the identity of the candidate is apparent by unambiguous reference." *Id.* § 30101(18).

<sup>55</sup> 11 C.F.R. § 300.2(m). While the definitions in Part 300 of the Commission regulations apply to the Bipartisan Campaign Finance Reform Act of 2002 ("BCRA"), the Commission has used 11 C.F.R. § 300.2(m)'s definition of "solicit" and "solicitation" to inform its analysis of non-BCRA portions of the Act. *See Factual & Legal Analysis*, MUR 6528 (Michael Grimm for Congress); *see also Factual & Legal Analysis* at 4 & n.16, MUR 6827 (Kent Roth for Kansas) (citing *Sorenson v. Secretary of Treasury*, 475 U.S. 851, 860 (1986), for the proposition that "[t]he normal rule of statutory construction assumes that identical words used in different parts of the same act are intended to have the same meaning" (internal quotation marks omitted)).

<sup>56</sup> 11 C.F.R. § 300.2(m).

1 candidate(s),” or uses phrases like “vote for the President,” “vote against Old Hickory,” and  
2 “reject the incumbent.”<sup>57</sup> In addition, a communication contains express advocacy if, “[w]hen  
3 taken as a whole and with limited reference to external events,” it “could only be interpreted by a  
4 reasonable person as containing advocacy of the election or defeat of one or more clearly  
5 identified candidate(s),” because it contains an “electoral portion” that is “unmistakable,  
6 unambiguous, and suggestive of only one meaning” and “[r]easonable minds could not differ as  
7 to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or  
8 encourages some other kind of action.”<sup>58</sup>

9 The Act and Commission regulations exempt from the definition of “contribution” and  
10 “expenditure” “[a]ny cost incurred in covering or carrying a news story, commentary, or editorial  
11 by any broadcasting station . . . unless the facility is owned or controlled by any political party,  
12 political committee, or candidate.”<sup>59</sup> This exclusion is generally referred to as the “press  
13 exemption” or “media exemption.”<sup>60</sup> A communication subject to the press exemption is also  
14 exempt from the Act’s disclosure, disclaimer, and reporting requirements.<sup>61</sup>

15 In order to assess whether the press exemption applies to a communication, the  
16 Commission uses a two-part test.<sup>62</sup> First, it asks whether the entity that engaged in the activity is  
17 a “press entity” as described by the Act and regulations.<sup>63</sup> Second, if the entity is a press entity,

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<sup>57</sup> *Id.* § 100.22(a).

<sup>58</sup> *Id.* § 100.22(b).

<sup>59</sup> 52 U.S.C. § 30101(9)(B)(i); 11 C.F.R. §§ 100.73, 100.132.

<sup>60</sup> Advisory Op. 2010-08 (Citizens United) at 3 (“AO 2010-08”).

<sup>61</sup> *Id.* at 7.

<sup>62</sup> *Id.* at 4; Advisory Op. 2005-16 (Fired Up!) at 4 (“AO 2005-16”).

<sup>63</sup> AO 2010-08 at 4; AO 2005-16 at 4.

1 the exemption will apply so long as it (a) is not owned or controlled by a political party, political  
2 committee, or candidate, and (b) is acting within its "legitimate press function" in conducting the  
3 activity.<sup>64</sup> The Commission has previously concluded that a press entity is not acting within its  
4 "legitimate press function" when a person pays the press entity to air the communication in  
5 question and that person maintains control over the content of the communication.<sup>65</sup>

6 Meluskey began hosting "The Alex Meluskey Show," sometimes known as "Fair Tax for  
7 All Radio," around August 2013.<sup>66</sup> Each episode of the show runs for an hour and airs on three  
8 Arizona radio stations: KKNT, KQNA, and KFNX.<sup>67</sup> The stations are owned by Salem Media  
9 Group, Inc. ("Salem"), Prescott Valley Broadcasting Co., Inc. ("Prescott Valley"), and Premier  
10 Radio Stations, LLC ("Premier"), respectively.<sup>68</sup>

11 During the time that Meluskey was a candidate, KKNT displayed a webpage for "The  
12 Alex Meluskey Show" that read: "Host: Alex Meluskey, Candidate for U.S. Senate, Arizona.  
13 The Alex Meluskey Show covers local, national and world news. Each week hear Alex's take on  
14 topics that concern us all. Listen to what the candidate thinks, and how he would tackle the

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<sup>64</sup> *Reader's Digest Ass'n, Inc. v. Fed. Election Comm'n*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981).

<sup>65</sup> Factual & Legal Analysis at 6 ("F&LA"), MUR 6089 (People with Hart Inc.) ("We conclude that the radio station is a press entity but that it is not acting as a press entity when it airs the Program because another entity pays for the airtime and maintains control over the content of the show."); *id.* at 7 (stating that MUR 5297 (Wolfe) held that "the station was not acting as a press entity but as an entrepreneur when it aired a show hosted by Wolfe because Wolfe paid for the airtime and maintained complete control over the content of the show").

<sup>66</sup> Meluskey Decl. ¶ 2; *see* Salem Resp. at 2 (Dec. 28, 2016); *The Alex Meluskey Show*, FACEBOOK, <https://www.facebook.com/TheAlexMeluskeyShow/> (last visited Apr. 11, 2017) ("The Alex Meluskey Show Facebook Page").

<sup>67</sup> The Alex Meluskey Show Facebook Page, *supra* note 66.

<sup>68</sup> Salem Resp. at 2; Premier Resp. at 1 (Nov. 22, 2016); *Call Sign Query*, FED. COMMC'NS COMM'N, <https://licensing.fcc.gov/prod/callsign/main.html> (last visited Apr. 11, 2017) (searching for "KQNA" reveals that Prescott Valley owns the KQNA call sign).

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1 issues.”<sup>69</sup> Beneath this blurb there was a link to Meluskey’s campaign website, which had a  
2 working contribution button on the homepage.<sup>70</sup> KFNX’s website contained the same  
3 description of the show but did not have a link to Meluskey’s campaign website.<sup>71</sup>

4 Recent episodes of “The Alex Meluskey Show” are available online as podcasts. The last  
5 five episodes that Meluskey hosted as a candidate (those airing between May 28, 2016, and  
6 June 25, 2016) are available in this format.<sup>72</sup> After the June 25 episode, Meluskey’s campaign  
7 manager, Craig Bergman, took over the show because Meluskey believed that the Act’s  
8 restrictions on electioneering prevented him from continuing to host in the run-up to the  
9 primary.<sup>73</sup> Bergman hosted five shows before Meluskey dropped out of the race.<sup>74</sup> Meluskey  
10 resumed hosting the show after he withdrew his candidacy.<sup>75</sup>

11 The Complaint alleges that Meluskey used his radio show to campaign for Senate,  
12 meaning whoever paid for the airtime made an undisclosed, and likely prohibited, contribution to  
13 the Committee.<sup>76</sup> In Response, the Committee contends that Meluskey began hosting the show

<sup>69</sup> *The Alex Meluskey Show*, 960 THE PATRIOT – KKNT – INTELLIGENT TALK, <http://960thepatriot.com/Shows/L3315> (page no longer accessible).

<sup>70</sup> *See id.*; *see also Alex Meluskey for US Senate*, <http://meluskey.nationbuilder.com/> (last visited Apr. 11, 2017).

<sup>71</sup> *The Alex Meluskey Show*, INDEP. TALK 1100 KFNN, <http://www.1100kfnx.com/index.php?/hosts/alexmeluskey> (last visited Apr. 11, 2017).

<sup>72</sup> *See The Alex Meluskey Show*, SOUNDCLOUD, <https://soundcloud.com/alexmeluskey> (last visited Apr. 11, 2017) (“SoundCloud”).

<sup>73</sup> *Id.* (June 25, 2016 episode at minute 1:14).

<sup>74</sup> *See id.* (July 2, 9, 16, 23, and 30, 2016 episodes).

<sup>75</sup> *See Meluskey Decl.* ¶¶ 17-18; *see generally SoundCloud*, *supra* note 72.

<sup>76</sup> Compl. at 1.

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1 before he became a candidate and that the purpose of the show is “to discuss current events and  
2 provide commentary on items of interest to the citizens of Arizona,” not campaign for office.<sup>77</sup>

3 Of the three media entities that aired “The Alex Meluskey Show,” two entities, Salem  
4 and Premier, deny making contributions to the Committee and provide information to show that  
5 Meluskey purchased airtime for the shows.<sup>78</sup> Salem filed a copy of a “time brokerage  
6 agreement,” in which Meluskey contracted to pay Salem a \$100-per-week “programming fee” to  
7 air his show.<sup>79</sup> Premier submitted a copy of its “broadcast agreement” with Meluskey, which  
8 charged him \$433.33 each month to broadcast and advertise his show.<sup>80</sup> Both entities assert that  
9 they charged Meluskey their usual and normal rates.<sup>81</sup> The third media entity, Prescott Valley,  
10 did not submit an official Response, but in an email to the Commission referenced Meluskey  
11 buying airtime.<sup>82</sup> While this is not conclusive, it suggests that Meluskey also paid Prescott  
12 Valley to broadcast his radio show.

13 The available information, however, does not establish how, and through what entity,  
14 Meluskey made payments to the media companies. Meluskey’s agreements with Salem and  
15 Premier, and the billing statement for Meluskey’s account with Salem, reference three possible  
16 payees: Meluskey in his individual capacity, Optimum Graphics, and Virtuous Communications,

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<sup>77</sup> Committee Resp. at 2, 5-6.

<sup>78</sup> Salem Resp. at 2; Premier Resp. at 2.

<sup>79</sup> Salem Resp., Exh. 1 at 1.

<sup>80</sup> Premier Resp., Exh. 1 at 1.

<sup>81</sup> Salem Resp. at 2; Premier Resp. at 2.

<sup>82</sup> Email from Sanford Cohen, President/General Manager, Prescott Valley Broadcasting Co., Inc., to Donna Rawls, Paralegal, FEC (Nov. 14, 2016) (“Prescott Email”) (stating that “much of what Mr. Meluskey bought from us was aired . . .”).

1 LLC (“Virtuous Communications”).<sup>83</sup> Virtuous Communications is a limited liability company  
2 registered in Arizona.<sup>84</sup> Meluskey is its sole member.<sup>85</sup>

3 1. The Press Exemption does not Apply to “The Alex Meluskey Show”

4 While this matter involves press entities, we conclude that the press exemption does not  
5 apply to the airing of “The Alex Meluskey Show.” Turning first to the activities of Salem,  
6 Premier, and Prescott Valley, we conclude that, while those companies are press entities because  
7 they regularly air news stories, political commentaries, and talk shows, and there is no indication  
8 that they are owned or controlled by a political party, political committee, or candidate,<sup>86</sup> they  
9 were not acting as press entities when they aired the “The Alex Meluskey Show,” because  
10 Meluskey, Virtuous Communications, or Optimum Graphics paid for the airtime and controlled  
11 the content of the show.<sup>87</sup> Under Commission precedent, a press entity is not acting within its  
12 “legitimate press function” when it cedes control over the content of a communication and  
13 receives payment to air the communication.<sup>88</sup> Accordingly, the activities of the three media  
14 companies do not fall within the press exemption.

<sup>83</sup> Salem Resp., Exh. 1 at 9; *id.*, Exh. 2 at 1; Premier Resp., Exh. 1 at 1-2.

<sup>84</sup> Virtuous Communications, LLC, Articles of Organization, Az. Corp. Comm’n (Jan. 21, 2015), *available at* <http://corporations.images.azcc.gov/04956008.pdf>.

<sup>85</sup> *Id.*

<sup>86</sup> See SALEM MEDIA GRP., <http://salemmedia.com/> (last visited Apr. 11, 2017); INDEP. TALK 1100 KFNX, <http://www.1100kfnx.com/> (last visited Apr. 11, 2017); KQNA 1130 AM TALK OF THE QUAD CITIES, <http://www.kqna.com/> (last visited Apr. 11, 2017); see also F&LA at 6-7, MUR 6089 (concluding that a radio station was a press entity because it was “in the business of producing on a regular basis news stories and talk shows” and did not appear to be owned or controlled by a political party, political committee, or candidate).

<sup>87</sup> See Salem Resp., Exh. 1 at 1, 3, 9-10; *id.*, Exh. 2; Premier Resp. at 2 & Exh. 1 at 1-2; Prescott Email, *supra* note 82. Salem’s and Premier’s contracts even specify that their hosts are responsible for the production of their own shows and do not express the views of the station. See Salem Resp., Exh. 1 at 1, 3; Premier Resp., Exh. 1 at 2.

<sup>88</sup> F&LA at 6-7, MUR 6089.

1 Turning to Meluskey's, Virtuous Communications', or Optimum Graphics' sponsorship  
2 and control of "The Alex Meluskey Show," we reach the same conclusion. Meluskey, as an  
3 individual, is not a press entity.<sup>89</sup> And regardless of whether Virtuous Communications and  
4 Optimum Graphics are press entities, they are both owned or controlled by Meluskey, who was a  
5 candidate for federal office at the time of the communications.<sup>90</sup> Thus, the press exemption does  
6 not apply to "The Alex Meluskey Show."<sup>91</sup>

7 2. "The Alex Meluskey Show" Engaged in Express Advocacy and Solicited  
8 Contributions Without the Required Disclaimers  
9

10 Because the press exemption does not exempt "The Alex Meluskey Show" from the  
11 Act's disclaimer requirements, we review whether Meluskey made solicitations and engaged in  
12 express advocacy on the air. We conclude that he did, and that episodes of "The Alex Meluskey  
13 Show" therefore required disclaimers.

14 A review of the available episodes that Meluskey hosted as a candidate shows that, every  
15 week, Meluskey solicited contributions to his campaign.<sup>92</sup> For example, Meluskey directed  
16 people to his website so that they could make contributions, stated that they "need to go out" and  
17 "contribute" to his campaign, told his listeners that he is "counting on [their] support," said that  
18 he would love his listeners' support and he needs "all the contributions [he] can get," and  
19 emphasized his opponent's fundraising advantage over his own.<sup>93</sup> During his final episode

<sup>89</sup> Cf. Conciliation Agreement, MUR 5297 (Wolfe) (stating that a candidate who paid a radio station to air his self-hosted radio program made in-kind contributions to his campaign).

<sup>90</sup> See *Reader's Digest Ass'n, Inc.*, 509 F. Supp. at 1215.

<sup>91</sup> 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R. § 110.11(a)(2)-(3), (b), (c); AO 2010-08 at 7.

<sup>92</sup> See generally SoundCloud, *supra* note 72.

<sup>93</sup> See *id.* (May 28, 2016 episode at minute 2:49; June 4, 2016 episode at minute 42:00; June 11, 2016 episode at minutes 13:23 and 28:27; June 18, 2016 episode at minute 1:08; and June 25, 2016 episode at minutes 10:36, 12:30, 21:06, and 25:04); see also 11 C.F.R. § 300.2(m).

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1 before the election, Meluskey also gave people instructions on how to purchase tickets to one of  
2 his fundraising events and stated that he would appreciate everyone who attends.<sup>94</sup> Moreover,  
3 Meluskey acknowledged that his on-air solicitations were successful during his June 11 episode,  
4 when he stated that he sometimes noticed a “flux” of contributions on days that his show was  
5 airing.<sup>95</sup>

6 Furthermore, during many of the episodes, Meluskey and Bergman expressly advocated  
7 the election or defeat of a clearly identified candidate. Meluskey told his listeners that they  
8 “need to go out” and vote for him, “the one candidate that . . . can actually win in November,”  
9 and Bergman asked people to “[v]ote for [his] friend Alex,” and told listeners that the person  
10 they “want to vote for is the real, true, proven conservative, Alex Meluskey.”<sup>96</sup> By naming  
11 Meluskey and asking or telling people to vote for him, the show engaged in express advocacy of  
12 a clearly identified candidate.<sup>97</sup>

13 Because any public communication that solicits contributions for a candidate or expressly  
14 advocates the election of a clearly identified candidate requires a disclaimer, and none of the  
15 available episodes of “The Alex Meluskey Show” contained disclaimers, we recommend that the  
16 Commission find reason to believe that the Committee violated 52 U.S.C. § 30120(a).

17 3. The Funding for “The Alex Meluskey Show” is a Contribution, but the  
18 Source is not Clear  
19

20 By soliciting contributions and expressly advocating his own election, Meluskey also  
21 evidenced an intent to influence a federal election. This means that any money spent on airing

<sup>94</sup> *Id.* (June 25, 2016 episode at minute 25:04).

<sup>95</sup> *Id.* (June 11, 2016 episode at minute 28:27).

<sup>96</sup> *Id.* (June 25, 2016 episode at minute 10:36; July 2, 2016 episode at minute 6:11; July 16, 2016 episode at minute 13:58).

<sup>97</sup> 52 U.S.C. § 30101(18); 11 C.F.R. § 100.22(a)-(b).

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1 the show was a contribution to the Committee, which the Committee was obligated to disclose.<sup>98</sup>

2 The existing record is unclear, however, on whether Meluskey paid for the show with his  
3 personal funds, or from funds controlled by Virtuous Communications or Optimum Graphics.

4 If Meluskey paid for the show using his personal funds, the Committee could accept the  
5 contributions because candidates may make unlimited contributions to their committees from  
6 their personal funds but still must report those contributions.<sup>99</sup> However, if Virtuous  
7 Communications or Optimum Graphics, each a limited liability company with unknown federal  
8 tax status, paid for the show, the Committee may have accepted a prohibited corporate  
9 contribution.<sup>100</sup>

10 In light of the uncertainty as to who paid for the radio show, and given the information  
11 from the radio stations that suggests that the LLCs controlled by Meluskey were involved in  
12 paying for the show, we recommend that the Commission find reason to believe that the  
13 Committee accepted prohibited contributions, in violation of 52 U.S.C. § 30118(a). Because the  
14 Committee failed to disclose payments for the radio show as in-kind contributions, regardless of  
15 who made those payments, we also recommend that the Commission find reason to believe that  
16 the Committee violated 52 U.S.C. § 30104(b).

17 Lastly, we recommend that the Commission take no action at this time against Salem,  
18 Prescott Valley, or Premier. The available evidence shows that Salem and Premier sold airtime  
19 and related services to Meluskey at the usual and normal charge.<sup>101</sup> While there is less

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<sup>98</sup> See 52 U.S.C. §§ 30101(8)(A)(i), 30104(b)(3)(A).

<sup>99</sup> See 11 C.F.R. § 110.10.

<sup>100</sup> See *id.* § 110.1(g).

<sup>101</sup> *Id.* §§ 100.52(d), 100.110(e). Because the person who disburses funds for a communication is the person responsible for including the appropriate disclaimer, the media entities did not violate the Act's disclaimer requirements. See 52 U.S.C. § 30120(a).

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1 information about Prescott Valley's financial arrangement with Meluskey, the available  
2 information appears to show that it did not pay to air the show either. Therefore, based on the  
3 record before the Commission and pending the results of our investigation, there is no  
4 information to support a conclusion that the media entities made contributions to the Committee  
5 in violation of 52 U.S.C. § 30118(a).

### 6 **III. PROPOSED INVESTIGATION**

7 During the investigation, we propose to seek more information about Meluskey's assets  
8 and his radio show. Specifically, we plan to ascertain: (1) information about funds Meluskey  
9 used to make loans to the Committee; (2) transcripts or recordings of episodes of "The Alex  
10 Meluskey Show" that aired while Meluskey was a candidate to determine the extent of the  
11 disclaimer and reporting violations; and (3) information about whether Meluskey, Virtuous  
12 Communications, or Optimum Graphics paid Salem, Premier, and Prescott Valley to air the radio  
13 show. This information will allow the Commission to determine the extent of the violations that  
14 have occurred and make findings against the proper parties. Although we plan to first use  
15 informal investigative methods, we recommend that the Commission authorize the use of  
16 compulsory process, including orders to submit written answers and subpoenas to produce  
17 documents, which we would use in the event the parties do not cooperate in providing this  
18 information.

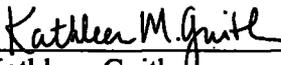
### 19 **IV. RECOMMENDATIONS**

- 20 1. Find reason to believe that Alexander Meluskey violated 52 U.S.C. § 30102(e)(1)  
21 by failing to file a timely Statement of Candidacy;
- 22  
23 2. Find no reason to believe that Meluskey for U.S. Senate, Inc. and Julianne Ryan  
24 in her official capacity as treasurer violated 52 U.S.C. § 30104(b)(5)(A) or (6)(A)  
25 by failing to disclose disbursements for printing;
- 26

3. Find reason to believe that Meluskey for U.S. Senate, Inc. and Julianne Ryan in her official capacity as treasurer violated 52 U.S.C. §§ 30104(b)(2), 30118(a), and 30120(a) by failing to accurately disclose information about the source of funds Alexander Meluskey loaned to his campaign, by accepting and failing to disclose prohibited in-kind contributions, and by failing to include the appropriate disclaimers in episodes of "The Alex Meluskey Show;"
4. Take no action at this time with respect to Salem Media Group, Inc.;
5. Take no action at this time with respect to Prescott Valley Broadcasting Co., Inc.;
6. Take no action at this time with respect to Premier Radio Stations, LLC;
7. Authorize the use of compulsory process, as necessary;
8. Approve the attached Factual and Legal Analysis; and
9. Approve the appropriate letters.

Lisa J. Stevenson  
Acting General Counsel

4/13/17  
Date

  
Kathleen Guith  
Associate General Counsel for Enforcement

  
Lynn Y. Tran  
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